

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

FRED LESTER BOOKER §
v. § CIVIL ACTION NO. 6:06cv132
JOEY SEEBER, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Fred Booker, proceeding *pro se*, filed this lawsuit complaining of alleged violations of his constitutional rights. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

On April 21, 2006, the Magistrate Judge ordered Booker to pay an initial partial filing fee of \$9.23, pursuant to 28 U.S.C. §1915(b). Booker received a copy of this order on May 2, 2006, but did not comply therewith; instead, on May 24, 2006, he filed a second application for leave to proceed *in forma pauperis*. This application showed that over the past six months, Booker had received deposits totaling \$200.00 in his inmate trust account and that his present balance was \$17.70.

On June 19, 2006, the Magistrate Judge issued a Report recommending that Booker's lawsuit be dismissed for failure to prosecute or to obey an order of the Court. The Magistrate Judge observed that Booker plainly had the wherewithal to pay the initial partial filing fee, but simply had not done so. The Magistrate Judge additionally recommended that the statute of limitations on Booker's claims be suspended for 60 days following the entry of final judgment, in order to prevent the dismissal without prejudice from operating as a dismissal with prejudice and to protect Booker against the expiration of the limitations period. Booker received a copy of this Report on June 27,

2006, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has carefully reviewed the pleadings and records in this cause, as well as the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED without prejudice for failure to prosecute or to obey an order of the Court. Rule 41(b), Fed. R. Civ. P. It is further

ORDERED that the statute of limitations be and hereby is SUSPENDED for a period of sixty (60) days following the date of entry of final judgment in this case. Mills v. Criminal District Court No. 3, 837 F.3d 677, 679 (5th Cir. 1988); Rodriguez v. Holmes, 963 F.2d 799, 801 (5th Cir. 1992). Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

SIGNED this 21st day of July, 2006.



MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE